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Attorneys for Defendant and Counterclaimant
Arthrex, Incorporated

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

KFX MEDICAL CORPORATION, a)	Case no. 11cv1698 DMS (BLM)
Delaware corporation,)	
Plaintiff and Counterdefendant,)	JOINT MOTION FOR LEAVE TO
v.)	FILE FIRST AMENDED COMPLAINT
ARTHREX, INCORPORATED, a Delaware)	AND TO AMEND CASE
corporation,)	MANAGEMENT ORDER
Defendant and Counterclaimant.)	REGULATING DISCOVERY AND
)	OTHER PRETRIAL PROCEEDINGS

1 Plaintiff KFx Medical Corporation (“KFx”) and Defendant Arthrex, Inc. (“Arthrex”),
2 hereby jointly move the Court for an order granting leave for KFx to file a first amended
3 complaint to add two recently issued patents to this lawsuit and to amend the case schedule to
4 accommodate the addition of these patents. Defendant Arthrex, Inc. (“Arthrex”) joins in this
5 motion seeking to add the two new patents provided the Court also agrees to extend the
6 schedule, as described below, to allow sufficient time for the parties to exchange
7 infringement and invalidity contentions regarding the new patents and to identify additional
8 claim construction issues with these new patents. To the extent the Court does not agree to
9 extend the schedule to accommodate the addition of these two new patents, Arthrex opposes
10 this motion.

11 KFx has recently been awarded two additional patents related to the patent currently
12 at issue in this case. Specifically, on January 24, 2012, KFx was awarded U.S. Patent No.
13 8,100,942 (“the ‘942 patent”), entitled “System and Method for Attaching Soft Tissue to
14 Bone.” And on February 7, 2012, KFx was awarded U.S. Patent No. 8,109,969 (“the ‘969
15 patent”), also entitled “System and Method for Attaching Soft Tissue to Bone.” These
16 patents are continuations of U.S. Patent No. 7,585,311 (“the ‘311 patent”) currently at issue
17 in this case. All three patents therefore share the same specification.

18 KFx alleges that Arthrex has infringed the new patents based upon the same activities
19 that KFx alleges infringe the ‘311 patent currently at issue. A copy of KFx’s proposed First
20 Amended Complaint has been lodged with this motion. Specifically, KFx alleges that
21 Arthrex’s marketing, sale and promotion of the systems and devices for performing what
22 Arthrex markets as the SutureBridge™ Double Row Rotator Cuff Repair surgical technique,
23 the SpeedBridge™ Knotless Double Row Footprint Reconstruction surgical technique, and
24 the SutureBridge™ and SpeedBridge™ double row Achilles tendon repairs infringe all three
25 patents. Arthrex denies infringement of the ‘942 and ‘969 patents and intends to allege
26 various affirmative defenses.

27 The parties have already exchanged infringement and invalidity contentions regarding
28 the ‘311 patent currently in this lawsuit, pursuant to Local Patent Rules 3.1-3.4. The parties

1 have also completed the Court's prescribed procedure (Local Patent Rules 4.1 and 4.2) for
2 identifying those claim limitations of the '311 patent they would like the Court to construe.
3 The asserted claims of the two new patents include limitations that are different than those of
4 the '311 patent. Thus, new contentions of infringement and invalidity will need to be
5 exchanged. And since there are different claim limitations being asserted in the new patents,
6 there will be additional claim construction issues that arise as a result of the exchange of
7 infringement/invalidity contentions.

8 Thus, when KFx approached Arthrex about amending its complaint to add the new
9 patents to this lawsuit, Arthrex agreed to join in this motion as long as the schedule is
10 extended in order to enable the parties to address all of these required issues which are
11 normally dealt with by the Court's Local Patent Rules.

12 Arthrex agrees with KFx that it is most efficient to resolve their disputes regarding all
13 three patents in a single lawsuit and the parties have worked together to devise a schedule that
14 accomplishes this with minimal disruption to the existing schedule. The parties proposal
15 would postpone the upcoming opening and responsive *Markman* briefing and Hearing dates
16 (currently scheduled for April 23, May 7 and June 4, 2012, respectively) until the parties have
17 completed the exchange of new infringement/invalidity contentions, and have completed the
18 Court's process for identifying those new claim limitations they would like the Court to
19 decide for the two new patents.

20 After completing this process for the two new patents (which follows that of the Local
21 Patent Rules of this Court, but in abbreviated fashion), the parties will then file a single set of
22 opening and responsive *Markman* briefs for all three patents and the Court can then conduct a
23 single *Markman* hearing on all three patents.

24 In order to achieve this, the parties have conferred and jointly propose an adjustment
25 to the schedule that achieves the following: (1) adds a schedule for the parties to exchange
26 contentions for the new patents; (2) adds a schedule for the parties to exchange claim
27 construction positions relating to the new patents and then submit claim construction briefs
28 addressing all three patents; and (3) generally continues the current dates by approximately

three months to allow the parties sufficient time to address the new patents in an orderly fashion. To that end, the parties propose the following new schedule:

Event	Previous Date	Proposed Date
Plaintiff Serves Infringement Contentions on '942 and '969 Patents		April 9, 2012
Defendant Serves Invalidity Contentions on '942 and '969 Patents		May 19, 2012
Simultaneous Exchange of Preliminary Proposed Claim Constructions and Extrinsic Evidence on '942 and '969 Patents		June 1, 2012
Parties Simultaneously Exchange Responsive Proposed Claim Constructions and Extrinsic Evidence on '942 and '969 Patents		June 12, 2012
Filing of Joint Claim Construction Chart, Worksheet and Hearing Statement on '942 and '969 Patents.		June 25, 2012
Close of Claim Construction Discovery	April 9, 2012	July 9, 2012
Opening Claim Construction Briefs and Supporting Evidence	April 23, 2012	July 23, 2012
Responsive Claim Construction Briefs	May 7, 2012	August 6, 2012
Last Day to File Claim Construction Discovery Motions	30 days after cutoff	30 days after cutoff
Claim Construction Hearing	June 4, 2012	September 10, 2012 or such date thereafter as may be convenient for the Court
Exchange of Expert Witnesses Designations	August 8, 2012	November 8, 2012
Deadline for Supplemental Designation of Expert Witnesses	August 29, 2012	November 29, 2012
Settlement Briefs in Anticipation of Mandatory Settlement Conference	September 4, 2012	December 4, 2012
Mandatory Settlement Conference	September 10, 2012	December 10, 2012
Close of Fact Discovery	October 1, 2012	December 21, 2012
Last Day to File Fact Discovery Motions	30 days after cutoff	30 days after cutoff
Opening Expert Reports	November 2, 2012	February 4, 2013
Supplemental Expert Reports	December 3, 2012	March 4, 2013
Close of Expert Discovery	February 1, 2013	May 1, 2013
Deadline to File All Motions, Excluding Motion to Join or Amend and Motions in	February 18, 2013	May 17, 2013

1	Limine		
2	Last Day to File Fact Expert Motions	30 days after cutoff	30 days after cutoff
3	Final Pre-Trial Conference	April 19, 2013	July 19, 2013 or such date thereafter as may be convenient for the Court
4			
5	Trial	May 20, 2013	August 19, 2013 or such date thereafter as may be convenient for the Court
6			
7			

8 For the foregoing reasons, the parties respectfully request that the Court grant KFx
9 leave to file its first amended complaint to add the two recently issued patents to this lawsuit
10 and also amend the case schedule as set forth above.

11
12 Respectfully submitted,

13 KNOBBE, MARTENS, OLSON & BEAR, LLP

14
15 Dated: April 2, 2012

16 By: s/Joseph F. Jennings

17 Joseph F. Jennings
18 Phillip A. Bennett

19 Attorneys for Plaintiff and Counterdefendant
20 KFx Medical Corporation

21
22 DICKSTEIN SHAPIRO LLP

23 Dated: April 2, 2012

24 By: s/Salvatore P. Tamburo

25 Michael A. Tomasulo
26 Charles W. Saber
27 Salvatore P. Tamburo
28 Megan S. Woodworth

Attorneys for Defendant and Counterclaimant
Arthrex, Incorporated

PROOF OF SERVICE

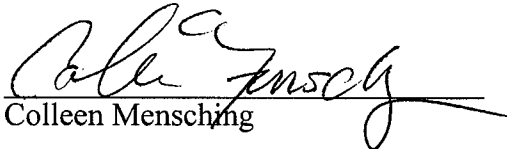
I hereby certify that on April 2, 2012, I caused the **JOINT MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND TO AMEND CASE MANAGEMENT ORDER REGULATING DISCOVERY AND OTHER PRETRIAL PROCEEDINGS** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the following person(s):

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I certify and declare under penalty of perjury under the laws of the State of California that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the forgoing is true and correct.

Executed on April 2, 2012, at San Diego, California.


Colleen Mensching

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